

REMARKS

Status of the Claims

Claims 1-4, 7 and 9 are currently pending in the application. Claims 1-9 stand rejected. Claim 1 has been amended as set forth herein. Claims 5, 6 and 8 have been cancelled herein. All amendments and cancellations are made without prejudice or disclaimer. No new matter has been added by way of the present amendments. Specifically, the amendment to claim 1 is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15. Reconsideration is respectfully requested.

Rejections Under 35 U.S.C. § 102(b)

Dickmanns et al., U.S. Patent No. 3,993,437

Claims 1, 4 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dickmanns et al., U.S. Patent No. 3,993,437 (hereinafter referred to as "Dickmanns et al."). (See, Office Action of September 17, 2007, at page 2, hereinafter, "Office Action"). Claim 8 has been cancelled herein without prejudice or disclaimer, thus obviating the rejection of claim 8. Applicants traverse the rejection as to the remaining claims as set forth herein.

The Examiner states that the amendment of claim 1 to recite "consisting essentially of" did not distinguish the presently claimed invention over that disclosed in Dickmanns et al. because this language "does not necessarily exclude the inclusion of other ingredients" and "renders the composition open to inclusion of unspecified ingredients which do not materially affect the basic and novel characteristics of the composition." (*Id.* at page 3). Although Applicants do not agree that claim 1 is anticipated by the disclosure of Dickmanns et al., to

expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

For the Examiner's convenience, Applicants provide the following table highlighting the fact that Dickmanns et al. do not disclose (or even suggest) the limitation recited in amended claim 1. In fact, none of the references cited by the Examiner in the Office Action disclose this limitation:

Reference	Disclosure of Reference and Distinguishing Features
Dickmanns et al.	Sulfur dyestuff is used Coloring is carried out with a dye No disclosure concerning fastness to light
Russ et al.	An aqueous dye is used Coloring is performed with a dye No disclosure concerning fastness to light
JP 68024207	Disclosure relates to a gloss-removing method of materials colored with dye or a pigment No disclosure concerning coloring of materials
Miyamatsu et al.	Disclosure relates to dying with extracted natural product, not direct dyeing No disclosure concerning fastness to light
Moeller et al.	Utilizes an isatin derivative colorant which is essential for keratin fiber (only human hair is used in Examples) No disclosure concerning fastness to light
Moeller II	A reactive mixture is used as a colorant for a keratin fiber (only human hair is used in the Examples section) No disclosure concerning fastness to light
Pai et al.	Utilizes a natural dye as a tannin substance Coloring is performed with a dye

One important characteristic of the presently claimed invention is that coloring is carried out without using any dye. This limitation is not disclosed in Dickmanns et al.

Furthermore, Applicants wish to reiterate their statements provided in the prior amendment of June 29, 2007, at page 5. That is, Applicants believe the Examiner has not fully rebutted Applicants' contention that Dickmanns et al. requires the presence of "dyestuff" to achieve the improved method of dyeing, as well as the presence of many other components or classes of components that are not recited in the presently claimed invention, especially the invention of amended claim 1.

Therefore, Applicants again assert that Dickmanns et al. do not anticipate the presently claimed invention because Dickmanns et al. do not disclose all of the limitations of the presently claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (*See, Verdegual Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Dependent claim 4 is not anticipated as, *inter alia*, depending from a non-anticipated base claim, amended claim 1.

Reconsideration and withdrawal of the anticipation rejection of claims 1 and 4 are respectfully requested.

Russ et al., U.S. Patent No. 5,810,890

Claims 1, 4 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Russ et al., U.S. Patent No. 5,810,890 (hereinafter referred to as "Russ et al."). (*See*, Office Action, at page 2). Claim 8 has been cancelled herein without prejudice or disclaimer, thus obviating the

rejection of claim 8. Applicants traverse the rejection as to the remaining claims as set forth herein.

The Examiner repeats the statement summarized above, concerning the Dickmanns et al. disclosure. That is, the Examiner states that Applicants' limitation of claim 1 in the prior amendment to the language "consisting essentially of" requires Applicants to prove that the other ingredients disclosed in the Russ et al. composition do not materially affect the claimed composition or method.

Although Applicants do not agree that claim 1 is anticipated by the disclosure of Russ et al., to expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

Therefore, Russ et al. do not anticipate the presently claimed invention because Russ et al. do not disclose all of the limitations of the presently claimed invention, as previously discussed in Applicants' reply of June 29, 2007 and as recited in amended claim 1. (See, *Verdegaal Bros*, 814 F.2d 631, 2 U.S.P.Q.2d 1053).

Dependent claim 4 is not anticipated as, *inter alia*, depending from a non-anticipated base claim, amended claim 1.

Reconsideration and withdrawal of the anticipation rejection of claims 1 and 4 are respectfully requested.

JP 68024207

Claims 1, 3, 4, 8 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by JP 68024207. (See, Office Action, at page 4). Claim 8 has been cancelled herein without prejudice or disclaimer, thus obviating the rejection of claim 8. Applicants traverse the rejection as to the remaining claims as set forth herein.

Again, the Examiner repeats the statements discussed above concerning the language recited in previously amended claim 1, "consisting essentially of."

Although Applicants do not agree that claim 1 is anticipated by the disclosure of JP 68024207, to expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

Therefore, Applicants assert that JP 68024207 does not anticipate the presently claimed invention because JP 68024207 does not disclose all of the limitations of the presently claimed invention, as recited in amended claim 1. (See, *Verdegaal Bros*, 814 F.2d 631, 2 U.S.P.Q.2d 1053).

Dependent claims 3, 4 and 9 are not anticipated as, *inter alia*, depending from a non-anticipated base claim, amended claim 1.

Reconsideration and withdrawal of the anticipation rejection of claims 1, 3, 4 and 9 are respectfully requested.

Rejections Under 35 U.S.C. § 103(a)

Miyamatsu et al., U.S. Patent No. 5,221,289

Claims 1-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miyamatsu et al., U.S. Patent No. 5,221,289 (hereinafter, "Miyamatsu et al."). (See, Office Action, at page 5). Claims 5, 6 and 8 have been cancelled herein without prejudice or disclaimer, thus obviating the rejection of these claims. Applicants traverse the rejection as to the remaining claims as set forth herein.

The Examiner repeats the statement summarized above, concerning the Dickmanns et al. disclosure. That is, the Examiner states that Applicants' limitation of claim 1 in the prior amendment to the language "consisting essentially of" requires Applicants to prove that the other ingredients disclosed in the Miyamatsu et al. composition do not materially affect the claimed composition or method.

However, the Examiner has failed to rebut Applicants' previous statements concerning the novelty of the presently claimed invention over the disclosure of Miyamatsu et al. For instance, at page 7 of Applicants' response of June 29, 2007, Applicants assert that the Miyamatsu et al. disclosure requires many different chemicals in its composition and further that Miyamatsu et al. is directed at a completely different invention, utilizing entirely different procedures and ingredients. Thus, one of skill in the art would not be motivated in any way to either consult the Miyamatsu et al. disclosure or to so modify it to arrive at the presently claimed invention. Again, the Examiner has not addressed any of these previous arguments of Applicants.

Although Applicants do not agree that claim 1 is anticipated by the disclosure of Miyamatsu et al., to expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

Furthermore the presently claimed method of dyeing achieves an excellent fastness to light. The Examiner's attention is respectfully directed to the Table highlighting the distinguishing features of the presently claimed invention over the cited references.

Since no specific reasoning is provided for the rejection of dependent claims 2-4 and 7, these dependent claims are believed to also be non-obvious in light of Miyamatsu et al. for, *inter alia*, depending from non-obvious base claim, amended claim 1.

Therefore, reconsideration and withdrawal of the obviousness rejection of claims 1-4 and 7 are respectfully requested.

Moeller et al., WO 98/47472

Claims 1-4, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moeller et al., WO 98/47472 (hereinafter, "Moeller et al."). (See, Office Action, at page 6). Claim 8 has been cancelled herein without prejudice or disclaimer, thus obviating the rejection of claim 8. Applicants traverse the rejection as to the remaining claims as set forth herein.

The Examiner repeats the statement summarized above, concerning the Dickmanns et al. disclosure. That is, the Examiner states that Applicants' limitation of claim 1 in the prior amendment to the language "consisting essentially of" requires Applicants to prove that the other

ingredients disclosed in the Moeller et al. composition do not materially affect the claimed composition or method.

However, the Examiner has failed to rebut any of Applicants previous statements concerning the novelty of the presently claimed invention over the disclosure of Moeller et al. For instance, at page 8 of Applicants' response of June 29, 2007, Applicants assert that the Moeller et al. disclosure requires many different chemicals in its composition and further that Moeller et al. is utilizes isatin compounds, as reflected in the Table provided, above.

Although Applicants do not agree that claim 1 is anticipated by the disclosure of Moeller et al., to expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

Since no specific reasoning is provided for the rejection of dependent claims 2-4 and 9, these dependent claims are believed to also be non-obvious in light of Moeller et al. for, *inter alia*, depending from non-obvious base claim, amended claim 1.

Therefore, reconsideration and withdrawal of the obviousness rejection of claims 1-4 and 9 are respectfully requested.

Moeller II. WO 01/34106

Claims 1-4, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moeller et al., WO 01/34106 (hereinafter, "Moeller II"). (See, Office Action, at page 7). Claim 8 has been cancelled herein without prejudice or disclaimer, thus obviating the rejection of claim 8. Applicants traverse the rejection as to the remaining claims as set forth herein.

The Examiner again states that Applicants' limitation of claim 1 in the prior amendment to the language "consisting essentially of" requires Applicants to prove that the other ingredients disclosed in the Moeller II composition do not materially affect the claimed composition or method.

However, the Examiner has failed to rebut any of Applicants previous statements concerning the novelty of the presently claimed invention over the disclosure of Moeller II. For instance, at page 9 of Applicants' response of June 29, 2007, Applicants assert that the Moeller II disclosure requires many different chemicals in its composition and further that Moeller II utilizes at least one aromatic aldehyde or ketone of formula I and at least one CH-active compound of formula II having one of the structures disclosed at column 2, line 40 to column 3, line 53.

Although Applicants do not agree that claim 1 is anticipated by the disclosure of Moeller II, to expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

Since no specific reasoning is provided for the rejection of dependent claims 2-4 and 9, these dependent claims are believed to also be non-obvious in light of Moeller II for, *inter alia*, depending from non-obvious base claim, amended claim 1.

Therefore, reconsideration and withdrawal of the obviousness rejection of claims 1-4 and 9 are respectfully requested.

Pai, U.S. Patent No. 5,516,338

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pai, U.S. Patent No. 5,516,338 (hereinafter, "Pai"). (See, Office Action, at page 8). Claims 5, 6 and 8 have been cancelled herein without prejudice or disclaimer, thus obviating the rejection of these claims. Applicants traverse the rejection as to the remaining claims as set forth herein.

Although Applicants do not agree that claim 1 is anticipated by the disclosure of Pai et al., to expedite prosecution, claim 1 has been amended herein without prejudice or disclaimer to recite, instead, "without using any dye." This amendment is supported by the specification at, for instance, paragraphs [0007], [0019], [0020] and generally Examples 1-15.

Since no specific reasoning is provided for the rejection of dependent claims 2-4, 7 and 9, these dependent claims are believed to also be non-obvious in light of Pai for, *inter alia*, depending from non-obvious base claim, amended claim 1.

Therefore, reconsideration and withdrawal of the obviousness rejection of claims 1-4, 7 and 9 are respectfully requested.

CONCLUSION

If the Examiner has any questions or comments, please contact Thomas J. Siepmann, Ph.D., Registration No 57,374, at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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